Internal Revenue Service

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MAY 28 1999

Taxpayers =

Partnerships =
State 1 =
State 2 =
State 3 =

Dear

This responds to Taxpayers application for a private letter ruling dated September 28, 1998. Taxpayers represent the following facts:

Taxpayers are two limited liability companies organized in State 3 and classified as partnerships for federal income tax purposes. Two S corporations hold more than 95% of each of the Taxpayers' membership interests in substantially identical proportions. Each Taxpayer owns and operates a hotel in State 1. Taxpayers are planning to dispose of their respective hotels and acquire resort-like hotels in State 2. Taxpayers seek to effectuate these transactions by entering into substantially identical but separate exchanges under section 1031 of the Code. It is represented that each transaction will take place as follows:

A Taxpayer will transfer all real and personal property associated with its hotel in

State 1 to a qualified intermediary. The qualified intermediary will then sell the hotel to an unrelated third party. Not more than 45 days after the transfer of the property, the Taxpayer will identify one or more replacement properties. Subsequent to this identification, the qualified intermediary will acquire replacement property using the funds from the sale of the relinquished property. Thereafter, but prior to the date replacement property is received, the Taxpayer will liquidate, transferring its assets and liabilities to its members. The partners immediately will then transfer these assets and liabilities to a newly formed limited partnership (Partnership). Each partner will hold both general and limited partnership interests in Partnership, and each partner's interest in capital, losses, and profits will be the same as held previously. Following the formation of Partnership and on or before 180 days following the transfer of the relinquished property to the qualified intermediary, the qualified intermediary will transfer the replacement property to the Partnership.

The stated business purpose for the formation of the Partnerships is to satisfy the requirements of potential lenders that the acquiring entities of the replacement properties be separate and apart from the owners of the relinquished properties as a safeguard against any liabilities carrying over to the replacement properties. Under these facts, Taxpayers are requesting a ruling that the Partnerships will be treated as both the transferors of the relinquished properties and the transferees of the replacement properties for purposes of section 1031(a) of the Code.

Section 708(a) of the Code provides that a partnership is considered as continuing if it is not terminated.

Section 708(b) of the Code provides that a partnership shall be considered as terminated only if either (A) no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership, or (B) within a twelve month period there is a sale or exchange of 50 percent or more of the total interest in partnership capital and profits.

Section 1.708-1(b)(1)(ii) of the Income Tax Regulations provides, in part, that a contribution of property to a partnership does not constitute a sale or exchange for purposes of § 708.

Section 721 of the Code provides that no gain or loss shall be recognized by a partnership or to any of its partners in the case of a contribution of property to the partnership in exchange for an interest therein.

Rev. Rul. 84-52, 1984-1 C.B. 157, considers the federal tax consequences of converting a general partnership into a limited partnership. In that revenue ruling, each partner's total percentage interest in the partnership's profits, losses, and capital remained the same after the conversion. Further, the business of the general partnership continued to be carried on after the conversion.

Rev. Rul. 84-52 holds that pursuant to § 721, the parties will not recognize gain or loss under § 741 or § 1001. The revenue ruling holds also that the general partnership is not terminated because the business of the general partnership will continue after the conversion and because, under § 1.708-1(b)(1)(ii), a transaction governed by § 721 is not treated as a sale or exchange for purposes of § 708.

Rev. Rul. 95-37, 1995-1 C.B. 130, examines the conversion of a domestic partnership into a domestic limited liability company classified as a partnership for federal tax purposes. Rev. Rul. 95-37 holds that the federal income tax consequences described in Rev. Rul. 84-52 apply to the conversion of an interest in a domestic partnership into an interest in a domestic limited liability company classified as a partnership regardless of the manner in which the conversion is achieved under state law.

Section 1031(a)(1) of the Code provides that no gain or loss shall be recognized on the exchange of property for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held for productive use in a trade or business or for investment.

Section 1031(a)(3) of the Code provides that for purposes of this subsection, any property received by the taxpayer shall be treated as property which is not of like kind if (A) such property is not identified as property to be received in the exchange on or before the day which is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange, or (B) such property is received after the earlier of (i) the day which is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or (ii) the due date (determined with regard to extension) for the transferor's return of the tax imposed by this chapter for the taxable year in which the transfer of the relinquished property occurs.

Accordingly, based on the facts and representations submitted and the above authorities, it is concluded that:

(1) The conversion of Taxpayers from limited liability companies into the respective limited partnerships will not result in a termination of either Taxpayer under § 708 of the Code, and for federal income tax purposes, the respective limited partnerships will be considered a continuation of the respective limited liability companies; and

(2) Partnerships will be treated as both the transferors of the relinquished properties and the transferees of the replacement properties for purposes of section 1031(a) of the Code.

No opinion is expressed or implied as to the tax consequences of the proposed transaction under the provisions of any other sections of the Code or regulations that may be applicable thereto, or the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not covered by the above rulings. Specifically, no opinion is expressed as to whether the transaction otherwise complies with the requirements of § 1031, and in particular, whether the replacement property to be received is of like kind to the real and personal property to be relinquished.

A copy of this ruling should be attached to the federal income tax return for the year in which the transaction in question occurs. This ruling is directed only to Taxpayers who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

Assistant Chief Counsel
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By Douglas A. Fahey
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cc: